

California Automotive Task Force

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*Automotive
Aftermarket
Industry
Association*

April 13, 2001

*Automotive
Engine
Rebuilders
Association*

Mr. Allen Lyons
Chief, New Vehicle/Engine Programs Branch
Air Resources Board
9528 Telstar Avenue
El Monte, CA 91731

*Automotive
Parts Rebuilders
Association*

Dear Mr. Lyons:

*Automotive
Repair Coalition*

The California Automotive Task Force comprised of the Associations listed below would like to thank the board staff for its cooperation and hard work in developing this workshop notice. Overall, we believe that this rule will go a long way toward ensuring competition in the vehicle repair aftermarket. This competition will benefit both consumers through lower repair costs and the environment through cleaner operating motor vehicles. We hope you will continue to aggressively pursue strong implementation of SB 1146.

*Automotive
Service Councils
of California*

*Automotive
Trade
Organizations of
California*

The task force would like to offer the following suggestions that will improve the effectiveness of this regulation in efficiently and affordably getting information to the service and parts industry. In addition, the task force would like to raise certain issues that we believe are critical to ensuring that consumers continue to have access to affordable repairs for their vehicle emissions systems. Finally, we also are offering revisions to the proposal in order to ensure that the regulations properly reflect the statutory language and intent of SB 1146.

*Automotive
Warehouse
Distributors
Association*

*California
Automotive
Wholesalers
Association*

Section 1969 (a): "Applicability" - The regulations as proposed would only apply to passenger cars, light-duty vehicles and medium duty vehicles. However, the law makes no distinction regarding which vehicles are covered, but instead applies to all motor vehicles as defined in the California statute. Therefore, we contend that the rule should apply to all motor vehicles including heavy duty vehicles. Those providing service and parts to those vehicles will need the same information in the very near future when heavy duty vehicles become subject to on-board diagnostic system requirements. It is our understanding that such requirements are pending with the U.S. Environmental Protection Agency. Covering heavy duty vehicles under the new rule would ensure that information is available as soon as possible; would allow heavy duty vehicle manufacturers to consider information availability requirements when designing their OBD systems and would eliminate the need for a later regulatory proceeding merely to include them in the rule.

*California
Service Station
and Automotive
Repair
Association*

*Coalition for
Automotive
Repair Equality*

Section 1969 (b) (9): "Fair, reasonable, and nondiscriminatory price" - The task force continues to be concerned about the absence of any consideration for the purchaser of the service information and tools. The factors defined in (A) – (G) only would measure the costs that would be incurred by the manufacturer, but do not look at whether the information would be affordable to a small vehicle service facility that works on multiple makes and models of

*Motor &
Equipment
Manufacturers
Association*

vehicles. At minimum, we urge that this section be changed to read “for the purposes of section 1969, means a price that is fair, reasonable and nondiscriminatory to both buyer and seller and that allows covered persons access to parts, information, training and diagnostic tools; as well as permit manufacturers to recover reasonable costs for providing required information and diagnostic tools considering the following.”

Section 1969 (9)(B): The last sentence of this section should be clarified to state: “Amortized capital costs of developing the distribution system for providing the information may be included;”

Section 1969 (9)(C): This section should be amended to read that “the priced charged by other motor vehicle manufacturer and other information providers for similar information.” This change would give CARB an additional universe of information providers to examine in order to determine if the vehicle manufacturer is making the information available at a reasonable price. Since these companies are more dedicated to providing information to independents, they also would act as a relevant gauge as to whether the information being made available by the car companies is affordable to the independent service industry.

Section 1969 (10): The definition of “initialization or reinitialization” needs to be amended in order to provide a more accurate description of the procedure technicians and rebuilders will need to possess in order to repair vehicle emissions systems on cars equipped with immobilizer anti-theft systems. We strongly recommend the following: “means the ability to reset the immobilizer function and/or reprogram the vehicle security system to accept the ignition key through software, hardware or any other means.”

Section 1969 (c)(1): The term “emission-related diagnosis and repair information” needs to be changed to “emission-related motor vehicle information” in order to be consistent with the terms defined in the statute.

Section 1969 (c)(1): The term “training materials” should be revised to “training courses and materials” since car companies should be required to provide the same courses that are available to the dealers, much of which would not be available if the manufacturers were only required to provide materials. The training issue is critical since important information necessary to work on OBD II equipped vehicles is sometimes only provided during manufacturer sponsored training. At minimum, if the car company is not able to make the actual course available to the independent, they must make a video tape or Internet version available.

Section 1969 (c)(2)(H): It is important to the effective promulgation of SB 1146 that vehicle manufacturers do not have the ability to avoid compliance with CARB’s regulation through use of this provision. Therefore, instructions should be added to the actual regulation similar to the statement included in the workshop notice. We suggest the following: “Where there are trade secret considerations, companies should organize and format the information required by this Section so that it will not be necessary to divulge specific algorithms, specific software code, specific calibration data or other data that might be considered by the manufacturer to be a trade secret.”

We also recommend revision of the last phrase of the section as follows: “except where such algorithms, codes or data are made available to franchised dealerships, manufacturer-authorized tool manufacturers or manufacturer-authorized parts manufacturers.” In this way, algorithms, codes or data will be made available to aftermarket service providers and parts

manufacturers and remanufacturers whenever that information has been shown to be necessary for emission-related service, repair, manufacture or remanufacture by the vehicle manufacturers own practice of sharing the information with third parties it has authorized to facilitate service, repair, manufacture and remanufacture of emissions-related motor vehicle parts.

Section 1969 (c)(3): The task force strongly supports use of SAE draft standard J2534. However, we believe that the law requires that the car companies make reprogramming available prior to the generic interface standard being incorporated into the system of each vehicle manufacturer. Section 43105.5 (a), of which the reprogramming requirement is a part, applies to all 1994 and later model year vehicles. Therefore, we urge that reprogramming capabilities along with necessary software update information be made available to all covered persons at the same time as other service information provisions become effective for all model years covered by the statute. The model year 1996 vehicles are just now hitting the independent aftermarket in large numbers. Therefore, a mandate to make reprogramming capability available to independents as soon as possible is clearly warranted if the goal of ensuring competition in the repair aftermarket is to be reached.

Car companies also should be required to make software which contains calibration updates available to tool providers that develop equipment for properly downloading OE updates on to vehicles. Similar to requiring car companies to make enhanced data stream information available to aftermarket tool providers, car companies also should make the software updates available for resale to customers of companies that make diagnostic and reprogramming tools. Such a requirement will go a long way to ensuring affordability of reprogramming capabilities by aftermarket service facilities.

Section 1969 (c)(4): This provision needs to be consistent with the statute and should be revised to require that "car companies make all information regarding initialization procedure relating to immobilizer circuits or other lockout devices to reinitialize vehicle on board computers that employ vehicle security systems if necessary to repair or replace an emissions-related part, or if necessary, for the proper installation of a vehicle on board computer that employs integral vehicle security systems."

The language change is critical to ensure, consistent with section 43105(a)(6) of the statute, that section 1969(c)(4) specifically requires that initialization procedures are available to the aftermarket to ensure that service, repair, manufacture and remanufacture of all emissions-related parts, not just the OBD system, are available to the aftermarket when such procedures are necessary in order to accomplish the repair and/or to design or remanufacture the part.

The car companies also must make information available to remanufacturers necessary to temporarily disable the anti-theft system in order to permit the remanufacturer to properly test the powertrain control module. Without this information, sources for these emissions critical devices will become limited to only the vehicle manufacturer, thus unnecessarily sending already sizeable repair prices, substantially higher. Since there are only a limited number of these companies, we do not foresee a difficult problem in crafting an agreement between the remanufacturers and the car companies in order to permit limited release of this information to responsible parties for production of rebuilt ECU's.

Section 1969 (c)(5): The task force supports requirements in the proposal that information be available 90 days following the effective date of this standard, as well as 90 days after the start of vehicle production or concurrently with availability to franchised dealerships. However, the task force also suggests that the language of the second sentence in this section be amended to read, “no later than 90 days after the start of vehicle production or concurrently with its availability to franchised dealerships, manufacturer-authorized tool manufacturers or manufacturer-authorized parts manufacturers, whichever occurs first.” As previously stated, OBD II equipped vehicles are now hitting the aftermarket in bulk and therefore the quicker information is available the better for car owners and the environment.

Section 1969 (d)(3)(B): We are uncertain as to why the board is proposing to exempt (d)(3)(L) from the requirement that information be available for download.

Section 1969 (d) (3)(D): The task force urges that the board include requirements under this subsection that web sites utilize standardized component and system terms as specified in SAE standard J1930. As CARB realizes, it is critical that the information available over the web site be easily and effectively navigable. The use by each manufacturer of different terms to describe the same vehicle emission component makes searching for the proper service information and technical service bulletin confusing and slow. Unlike dealers that work on only one make and model of vehicle, independents must work on many different models and therefore cannot become as familiar with each OEM’s terms as the dealer. Standardizing terms therefore could provide technicians with substantial assistance in locating and using service information on web sites.

We also strongly suggest that the rule require that the search engine on each site be required to allow a search by vehicle manufacturer’s part number. Many times this is the most obvious or even only information that is available to the service or parts provider. Requiring a search by part number will likely be one of the more efficient ways for the provider to access the needed information.

Section 1969 (g): “Access Codes” - The third line of this section should be amended to replace the term “emission-related part” with the term “emissions related motor vehicle part” since emission related part is defined in the legislation to only include motor vehicle manufacturer’s parts while the latter refers to aftermarket parts. The provision is directed at ensuring that the use of aftermarket parts are not “locked-out” through the utilization by car companies of recognition codes or encryption technology.

Section 1969 (h): “Trade Secrets” provisions should be amended to state: “Manufacturers may withhold information which must otherwise be made available if the information is a trade secret (as defined in the Uniform Trade Secret Act contained Title 5 of the Civil Code), subject to the following.” The law is clear that only information that meets the definition of a trade secret contained in the Act can be withheld.

Section 1969 (h)(3)(A) and (C): These sections should be amended to clarify that the information that is withheld in consideration of trade secret claims and that is subsequently determined must be made available, either by the court or by the manufacturers, should be made available to all covered persons and not just the requesting covered person as currently required in your proposal.

Section 1969 (h)(3)(D): the task force is concerned as to how a court venue will be determined should the company be located out of state, but does business in the state of

California. Therefore, we urge that either Los Angeles or Sacramento be designated as the county for filing the petition if the covered person's principal place of business is out of state.

Thank you for your attention to these concerns. We look forward to further discussing these issues with the Board during the workshop and at subsequent opportunities.

Sincerely,

**Automotive Aftermarket Industry Association
Automotive Engine Rebuilders Association
Automotive Parts Rebuilders Association
Automotive Repair Coalition
Automotive Service Councils of California
Automotive Trade Organizations of California
Automotive Warehouse Distributors Association
California Automotive Wholesalers' Association
California Service Station and Automotive Repair Association
Coalition for Automotive Repair Equality
Motor & Equipment Manufacturers Association**